IN THE HIGH COURT OF JUDIATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.9113 OF 2004

Anil Narasgonda Patil .. Petitioner.
Vs.
Gram Panchayat,
Mangaon, Kolhapur & Anr. .. Respondents.

Mr.Amit Borkar for the petitioner.

CORAM : D.B.BHOSALE, J.

DATED : 2ND DECEMBER, 2004

ORAL ORDER:

. Heard Mr.Borkar, learned counsel for the petitioner.

2. This petition under Article 227 of the Constitution of India is directed against the order dated 20.10.2004 passed by the Additional Commissioner, Pune Division, Pune, dismissing the appeal filed by the petitioner under sub-section 2 of section 16 of the Bombay Village Panchayat Act, 1958 (for short "the Act"). The petitioner had challenged the order dated 25.11.2003 passed by the Deputy Collector in the application No.38/2003, disqualifying him from holding elective office of Panchayat. The application was filed by respondent no.2 seeking declaration that the petitioner has incurred the disqualification under clause (j-1) of

sub-section (1) of the Act which provides that no person shall be a member of a panchayat, or continue as such, who has more than two children. The Maharashtra Zilla Parishads and Panchayat Samitis (Amendment) Act, 1995 (Mah.XLIV of 2000) (for short "Amendment Act") was enacted and came into force on 13.9.2000 by which clause (j-1) in section 14(1) has been inserted in the Act.

3. The petitioner got elected as a member of the gram panchayat in August 2000 for a period of five years. At that time he had two children born on 1.8.1993 and 2.11.1999. The third child was born on 22.4.2002. The date of commencement of the Act is 13.9.2000. As per the second proviso to clause (j-1) the period of one year from the date of commencement got over on 12.9.2001. In view of this the authorities below have declared him disqualified from holding elective office of Panchayat.

4. The relevant provisions read reads thus:

> 14.(1) No person shall be a member of a panchayat, or continue as such, who--
> xxx xxx xxx xxx
> xxx xxx xxx xxx

(j-1) "has more than two children:

Provided that, a person having more than two children on the date of commencement of the Bombay Village Panchayats and the Maharashtra Zilla Parishads and Panchayat Samitis (Amendment) Act, 1995 (Mah.XLIV of 2000) (hereinafter in this clause referred to as "the date of such commencement"), shall not be disqualified under this clause so long as the number of children he had on the date of such commencement does not increase:

Provided further that, a child or more than one child born in a single delivery within the period of one year from the date of such commencement shall not be taken into consideration for the purpose of disqualification mentioned in this clause; or".

5. The opening words of this section "No person shall be a member or continue as such" show that the disqualification specified in this section are applicable to a candidate or a member. The word "continue" applies when the disqualification is incurred after the election. Under this provision the member of a panchayat cannot continue

as such, who has more than two children. The first proviso to clause (j-1), however, indicates that a person having more than two children on the date of commencement of the Amendment Act shall not be disqualified under this clause so long as the number of children he had on the date of such commencement does not increase. The second proviso provides further safe guard that a child or more than one child born in single delivery within the period of one year from the date of such commencement shall not be taken into consideration for the purpose of disqualification mentioned in this clause.

6. Mr.Borkar, learned counsel for the petitioner, however, submitted that the word ‘born’ as occur in the second proviso to clause (j-1) cannot be read as delivery of the child. He further submitted that the Embryologic investigation suggests that cardiac contractions of child/foetus in the womb begin at 36th day of gestation. In other words, the contractions of heart of a child/foetus starts at 36th day from the date of conception and, therefore, the child/foetus is said to have born on 36th day from the date of conception. According to Mr.Borkar, considering the date of birth of the third child i.e.

22.4.2003 it is clear that he was conceived on 12.7.2002 and his cardiac contraction began on 18.8.2002 whereas one year's period as contemplated under second proviso to clause (j-1) got over on 12.9.2001. He, therefore, submitted that 3rd child cannot be taken into consideration for disqualifying the petitioner under clause (j-1) since he was born before 12.9.2001. In short the petitioner is entitled to claim benefit of the second proviso to clause (j-1).

6.1 The plain language of the second proviso makes it absolutely clear that the Legislature was conscious of the fact that if the child/foetus is already conceived or conceived immediately within a period of 2-3 months from the date of commencement of the Amendment Act such person/member needs to be excluded from its application. And, therefore, the enforcement of disqualification is postponed for a period of one year from the date of commencement of the Amendment Act. In other words, a person having more than two children up to expiry of one year of the commencement of the Amendment Act is not disqualified. This postponement for one year takes care of any conception on or around the commencement of the Amendment Act, the normal period of gestation being nine months. If a women

has conceived at the commencement of the Amendment Act then any one of such couples would not be disqualified. Though not disqualified on the date of election if any person holding office of panchayat incurs a disqualification by giving birth to a child one year after commencement of the Amendment Act he becomes subject to disqualification and is disabled from continuing to hold the office. The disability is incurred by the birth of a child which results in increasing the member of living children, including the additional child born one year after the commencement of the Amendment Act, to a figure more than two. In any case, therefore, it would not be possible to read the word "born" to mean date of cardiac contractions in the womb. The word "born" will have to be given plain meaning as understood in common parlance or found in the dictionary. As per the Oxford dictionary the word "born" means "existing as a result of birth". In the Black's Law dictionary the word "born" means "act of being delivered or expelled from the mother's body, whether or not placenta has been separated or cord cut". The word "born" as occurs in clause (j-1), in my considered opinion, is the date of delivery and not the date of beginning of cardiac contradictions in the womb. In the circumstances I

have no hesitation in rejecting the first submission of Mr.Borkar, learned counsel for the petitioner.

7. This takes me to consider the second submission of Mr.Borkar that respondent no.2 has no locus to seek declaration as to a disqualification of the petitioner to continue as a member of the Panchayat on the ground contemplated under clause (j-1) of sub-section 1 of section 14 of the Act. According to him sub-section 2 of section 16 provides that the Collector either suo motu or on an application made to him by any person in that behalf, and declare seat vacant, means that either the Collector can suo motu initiate enquiry or the member of gram panchayat alone can make an application; seeking such declaration and since respondent no.2 was not a member of the gram panchayat he had no locus to file such application. I am unable to accept the submission of Mr.Borkar that "any person in that behalf" means only member of the gram panchayat. The plain reading of sub-section 2 is absolutely clear which in my opinion means that any person in the village who is a voter in election of the gram panchayat can make an application seeking declaration as to a disqualification of the member of the gram

panchayat as contemplated under section 14 of the Act. In the circumstances the writ petition fails and is dismissed as such.

(D.B.Bhosale, J.)